



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Peter J. DeVries, et al.  
Assignee: ABBOTT LABORATORIES  
Serial No.: 10/684,109  
Filed: October 10, 2003  
For: ERYTHROPOIETIN RECEPTOR  
BINDING ANTIBODIES  
Attorney Docket No.: 6989.US.02  
Date: December 19, 2003

EXPRESS MAIL NO.: EV314259969US  
**Certificate of Mailing under 37 CFR §1.10:**  
I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service as Express Mail Post Office to Addressee Service with sufficient postage in an envelope addressed as follows:

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Date of Deposit: 1-6-04

*Kimberly A. Iorio*  
Kimberly A. Iorio

DECLARATION OF DIANNE CASUTO  
PURSUANT TO 37 C.F.R. §5.25

Attention Licensing and Review  
Commissioner of Patent and Trademarks  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

I, Dianne Casuto, hereby declare as follows:

1. I am an attorney in the legal department of Abbott Laboratories, 100 Abbott Park Road, Abbott Park, Illinois 60064 and I am responsible for the U.S. and foreign patent application filings of the subject matter contained in the application for which I currently am requesting a retroactive foreign filing license.
2. I drafted a continuation-in-part (CIP) application of U.S. Serial No. 10/269,711 ("Parent Application"), which I filed in the United States Patent and Trademark Office ("USPTO") on October 10, 2003. This application now has received U.S. Serial No. 10/684,109 ("CIP Application"). The subject matter added in the CIP Application merely supplements and expands on that described in the Parent Application.
3. At the time I filed the CIP Application abroad it was not under a secrecy order, and it is not currently under a secrecy order. The Parent Application also was not under a secrecy order, and it also is not currently under a secrecy order.

4. In order to claim the benefit of the earlier filing date of the Parent Application under the terms of the Paris Convention, I needed to foreign file the CIP Application by no later than October 14, 2003 ("Convention Filing Date").

5. On October 1, 2003, in order to obtain the translations needed for Argentina, Chile, Malaysia, Peru, Taiwan, Thailand, Uruguay, and Venezuela in due time to ensure filing the CIP Application by the convention filing date, I instructed the foreign filing clerk in our department to notify our foreign agents of the convention filing date and to request commencement of the translations of the specification. I further instructed our foreign filing clerk to notify the foreign agents that although the specification was not yet completed, the final English version would be provided to them by October 10, 2003.

6. Without seeking further guidance from me, the clerk carried out my instructions on October 1, 2003. The transmittal letters evidencing the request for foreign filing in these countries as well as the confirmation letters showing that the applications were filed by October 14, 2003 are attached hereto as Exhibit B and Exhibit C, respectively.

7. Because of the length of the application and the limited time period for completing the translations, I did not believe that the foreign agents would be able to file the foreign applications prior to October 14, 2003.

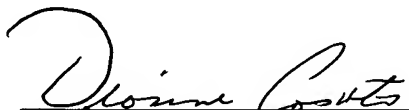
8. Also, through error and without deceptive intent, when I filed the CIP Application in the USPTO on October 10, 2003, I believed I could procure the necessary foreign filing license in one or two days or at least prior to October 14, 2003.

9. Through error and without deceptive intent, I did not understand the extent to which the Columbus Day holiday, occurring on October 13, 2003, could delay my ability to obtain the foreign filing license prior to the Convention Filing Date.

10. Since discovering this error on October 15, 2003, I have proceeded diligently to obtain a retroactive license and have assisted in gathering the information necessary to support this Petition.

I make such statements knowing that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing thereon. All statements made are true and made on information and belief and are believed to be true.

Date: January 6, 2003

  
Dianne Casuto